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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

346 U.S.
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No. 400

LOUIS COMI,

Petitioner,

vs.

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND AND BRIEF IN SUPPORT THEREOF

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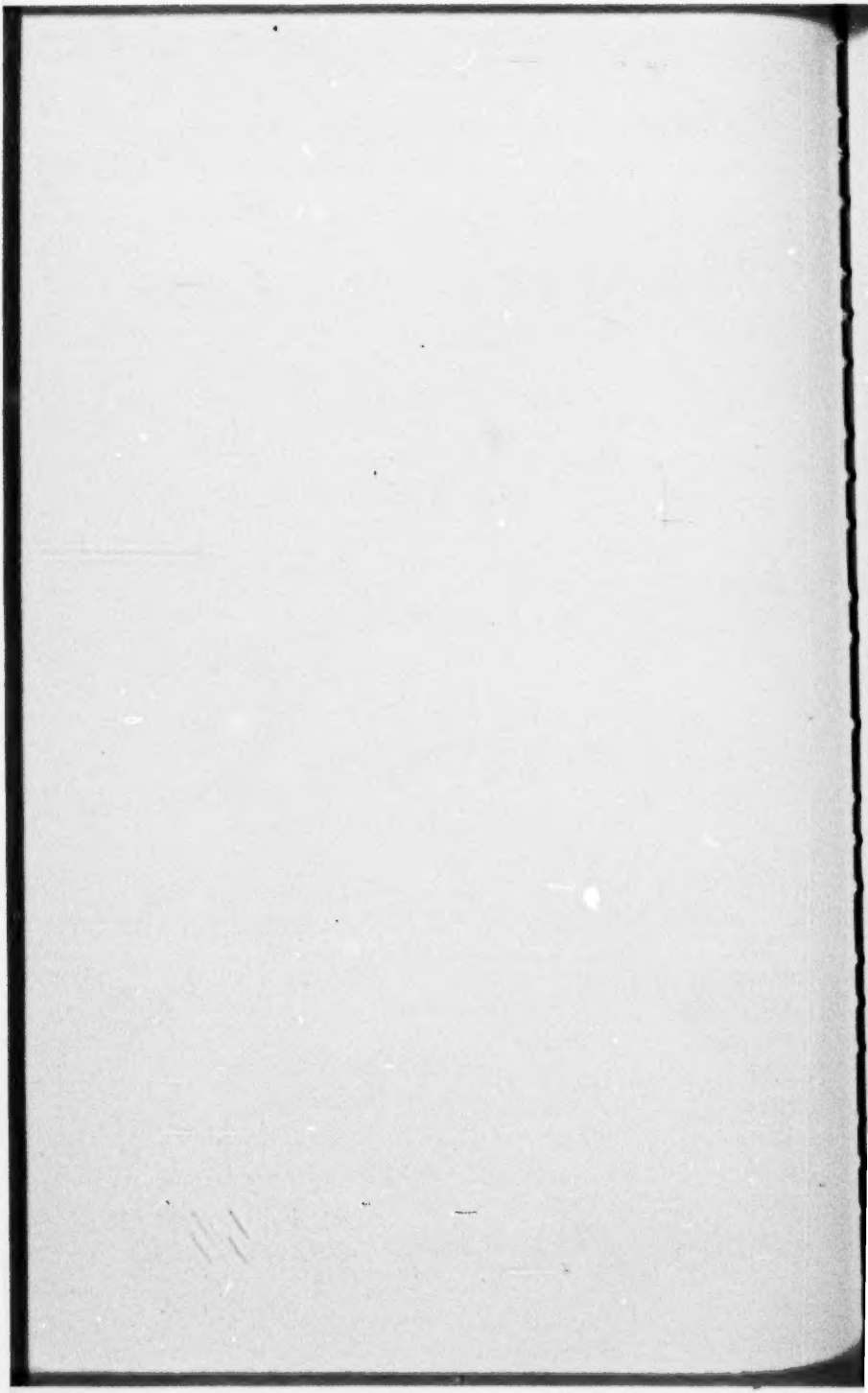

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner, Louis Comi, respectfully prays for a Writ of Certiorari to the Court of Appeals of Maryland, to review the opinion of that Court filed in the above cause on June 11, 1953.

JURISDICTION

Jurisdiction is conferred upon the Supreme Court to review this case by Writ of Certiorari under Section 1254 of the Judicial Code (Title 28, U. S. C. A.), as enacted June 25, 1948.

SUMMARY STATEMENT OF THE MATTER INVOLVED

The Maryland Court of Appeals, in its Opinion affirming the judgment and sentence in the above entitled cause, disregarded the right of the petitioner to have his counsel sum up and argue his case before a jury without an arbitrary limitation on the time for such presentation.

QUESTION PRESENTED

Whether the Maryland Court of Appeals erred in upholding the trial court's ruling on the petitioner's motion taking exception to the limitation on time for argument of the petitioner's case to the jury to an hour and a quarter.

REASONS FOR GRANTING THE WRIT

1. The Maryland Court of Appeals upheld the action of the lower court denying to the petitioner the due process of law guaranteed to the petitioner by the 14th Amendment to the Constitution of the U. S., in that trial court arbitrarily and unreasonably limited the time for petitioner's counsel to argue his case before the jury.

2. The Maryland Court of Appeals ignored the abuse by the trial court of its discretion to limit the length of argument by petitioner's counsel.

3. The Maryland Court of Appeals upheld action of the trial court amounting to a denial of the petitioner's right to be fully heard by counsel guaranteed to him by the 14th Amendment to the Constitution of the United States and by Article 21 of the Declaration of Rights, Constitution of Maryland and Article 15, Section 5 of the Constitution of Maryland.

WHEREFORE your Petitioner prays that a Writ of Certiorari issue to the Court of Appeals of Maryland, commanding that Court to certify and send to this Court, on a day to be determined, a full and complete transcript of the record of all the proceedings of such Court of Appeals, had in this case, to the end that the judgment of the Court of Appeals of Maryland may be reversed, and that the Petitioner be granted such other and further relief as may seem proper.

R. PALMER INGRAM,

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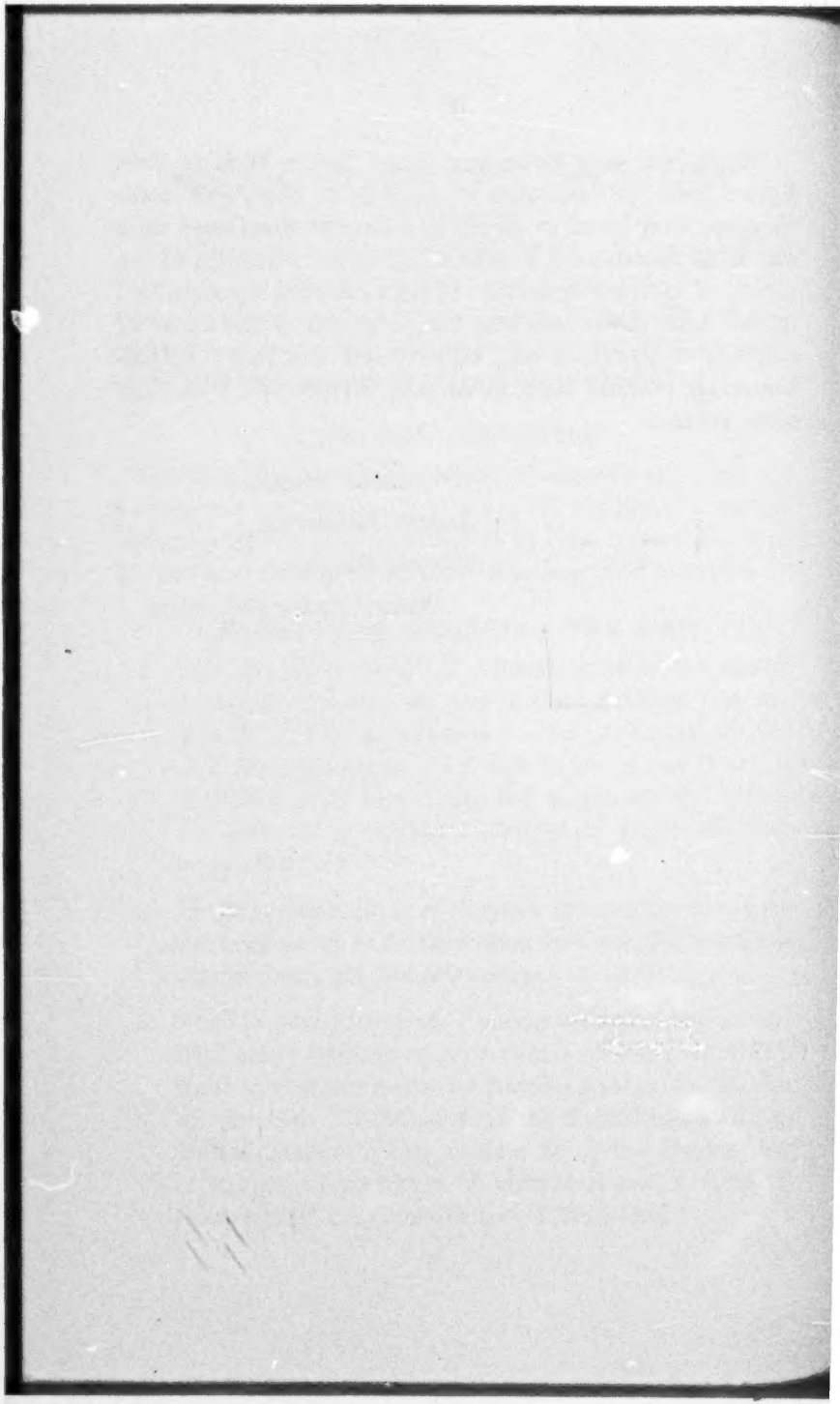
REUBEN SHILING,

Attorneys for Petitioner.



IN THE

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OCTOBER TERM, 1953

No. ------

LOUIS COMI,

Petitioner,

vs.

STATE OF MARYLAND,

Respondent.

BRIEF IN SUPPORT OF PETITION

STATEMENT OF THE CASE

The Indictment herein charged that during the period from January 1, 1950 through January 17, 1952, the petitioner conspired with Leo Quattroche, Anthony Astarita, Alexander Astarita otherwise called Lee Astarita, Thomas Murray, Washington Bragg, Norman Brown and certain other unknown persons to violate the lottery laws of the State of Maryland. The Appellant had been previously indicted for the same offense with three of the co-conspirators named in the indictment involved in this case. At the first trial, in the Criminal Court of Baltimore (Sherbow, J.), the jury could not agree on a verdict and was discharged. In that trial no time limit was imposed on argument to the jury.

None of the five alleged co-conspirators, jointly indicted, were brought to trial on the indictment. As a result of their testimony in the earlier trial of the Appellant, Leo Quattroche and Anthony Astarita, two of the co-conspirators, were released from imprisonment for other lottery convictions and fines imposed on them were suspended.

A trial on said Indictment required three full days of testimony from 38 witnesses and filled 564 pages in the Record. The trial court, (Mason, J.), however, limited the time for argument to the jury by the petitioner's two counsel to a total of one hour and fifteen minutes, although in Maryland, by virtue of Article 15, Section 5 of the Constitution of Maryland, the jury are "the Judges of Law, as well as of fact", in the trial of all criminal cases. Timely objection by petitioner's counsel to the limitation was overruled.

Article 27, Sections 423-437, of the Maryland Code of Public General Laws, 1951 fix a maximum penalty of one year imprisonment or a fine of $1,000, or both, for violation of the lottery laws. The penalty for the crime of conspiracy (charged in this indictment), under Section 46 of said Article 27 is fixed at a maximum imprisonment of 10 years or a fine of $2,000.00 or both.

The trial resulted in a verdict of guilty and, on November 14, 1952, the petitioner was sentenced to seven years in the Maryland Penitentiary and fined $2,000.00 and costs. A motion for a new trial was filed but was denied. The sentence was suspended upon an appeal to the Court of Appeals of Maryland.

On June 11, 1953, the Maryland Court of Appeals affirmed the judgment and sentence.

SPECIFICATION OF ERROR

The limitation imposed by the trial court on the amount of time the petitioner's counsel could use in summing up and arguing this case on the law as well as the facts before the jury was so unreasonable as to amount to a denial of due process guaranted to the petitioner under the Fourteenth Amendment to the Constitution of the United States and violate the guarantees of right to counsel provided in Article 21 of the Declaration of Rights, Constitution of Maryland and Article 15, Section 5 of the Constitution of Maryland.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States, Amendment XIV:

> "Sec. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article 21, Declaration of Rights, Constitution of Maryland:

> "Art. 21. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment or Charge in due time (if required) to prepare for his defense; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty."

Article 15, Section 5 of the Constitution of Maryland:

> "In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the court may pass upon the sufficiency of the evidence to sustain a conviction."

ARGUMENT

THE LIMITATION IMPOSED BY THE TRIAL COURT ON THE AMOUNT OF TIME THE PETITIONER'S COUNSEL COULD USE IN SUMMING UP AND ARGUING THIS CASE ON THE LAW AS WELL AS THE FACTS BEFORE THE JURY WAS SO UNREASONABLE AS TO AMOUNT TO A DENIAL OF DUE PROCESS GUARANTEED TO THE PETITIONER UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND IN VIOLATION OF THE GUARANTEES OF RIGHT TO COUNSEL PROVIDED IN ARTICLE 21 OF THE DECLARATION OF RIGHTS, CONSTITUTION OF MARYLAND AND ARTICLE 15, SECTION 5 OF THE CONSTITUTION OF MARYLAND.

Three full days were spent in the examination and cross-examination of 38 witnesses. The testimony filled 564 pages in the Record. The crime involved was a serious one, considered by the trial judge himself as a penitentiary misdemeanor and one for which he had imposed sentences of imprisonment up to 7 years in the penitentiary prior to this trial, and he imposed a sentence of seven years plus a fine of $2,000 on the Appellant in the present case. Yet, despite defense counsel's earnest contention that they needed more time to argue this case before the jury, the judge limited them to a total of one hour and fifteen minutes.

Under the Maryland Constitution, the jury in a criminal case is the sole judge of the Law, as well as the facts. In this case it became necessary, consequently for petitioner's counsel to sum up and argue to the jury, not only the law with respect to lottery, but also the involved law of conspiracy. In this particular case, also involved were the legal questions relating to accomplices and co-conspirators.

We believe the contention that more time was needed is given point by the observation that in the previous trial of the petitioner, before another trial judge, referred to herein in the Statement of the Case, no time limitation was imposed by that Trial judge on argument to the jury by petitioner's counsel, who requested, and actually spent three hours in summation and argument to the Jury. In that trial, the jury could not agree on a verdict and was dicharged.

Contrasted to the seven years given the Appellant in the penitentiary the time allowed for the presentation of his defense was certainly not liberal. Actually the argument of defense Counsel to the jury was necessarily hurried, and, although this does not appear in the Record, the court stopped one of defense counsel in the midst of his final argument, allowing him merely two minutes to bring his discussion to a conclusion. This was done despite the fact that the judge knew that, following the imposition of his time restriction, the testimony of a new and important witness, Thomas Murray, was introduced into the case.

The law on the point is quite clear and we respectfully submit that under all the circumstances of this case the limitation imposed by the court was clearly unreasonable.

In *American Jurisprudence*, Vol. 53, Sec. 461, page 365, it is said:

> "Time allowed for argument:
>
> "* * * The only limitation upon the discretion of the Court to limit the length of arguments, however, is that the time given must be reasonable and of such length as not to impair the right of argument or to deny a full and complete defense. Thus, the limitation in a criminal prosecution must not be such as to deprive the accused of the right to make his defense to the jury and to be heard by his counsel *on the whole case. Any*

> *error in this regard is generally considered sufficient to entitle the accused to a new trial.* * * * Whether the discretion of the court has been properly exercised depends entirely upon the circumstances of each case, the number of witnesses examined, the volume and character of the evidence, the time consumed in the trial of the case, as well as any other matters which properly have a bearing upon the time necessary to present the case fully to the jury. * * * Conversely, there is authority for the view that in a criminal prosecution, the constitutional guarantee that a person accused of crime shall have the right to be heard by counsel prohibits a trial court from pre-determining the time in which counsel may argue the case before the jury, although under such a view a trial court is not precluded from stopping the argument when it is manifest that the discussion is complete and the subject exhausted." (Emphasis supplied.)

See also, 2 *Ruling Case Law* at 407, "Arguments of Counsel", sec. 4, which states:

> "Sec. 4: Time of Argument. — * * *. It has been held, however, that in a criminal case, the constitutional guarantee that a person accused of crime shall have the right to be heard by counsel prohibits a trial court from predetermining the time in which counsel may argue the case before the jury. This does not preclude the trial court from stopping the argument when it is manifest that the discussion is complete and the subject exhausted."

In the case of *People v. Fernandez,* 87 Pac. 1112 at 1114 (Cal., 1906), conviction for assault with intent to rape a female child was reversed where the lower court limited final arguments to one hour and three-quarters after a trial covering 350 pages of transcript. In determining that the court there abused its discretion by restricting in advance the time allowed, it was held:

"* * * Nor is it a safe guide for the judge to determine the limit by the time in which he might think he could adequately present the case fully for the defendant. The character of the testimony and the issues raised by it; its conflicting nature as well as the nature of the charge itself must be considered; as was said in People v. Keenan (13 Cal. 581), supra: 'It is difficult for a judge to determine what effect a given line of argument may have upon a jury, or some one of them, or what period may be necessary to enable counsel to present in the aspect deemed by them important, the case of their client. The minds of men are so differently constituted that one advocate may require much more for the statement and elaboration of his views than another.

"Where counsel are limited to a stated time deemed by them to be too short, they may find it necessary to omit points of importance in order to give more attention to others deemed of greater importance. Or the elaboration of essential points deemed important may be prevented in order to make all the points desired. Then, too, counsel speaking under limitations of time which they feel to be wholly inadequate, are under constraints not conducive to their best efforts and to the full protection of defendant's rights. * * * We must conclude that there was prejudicial error in making the order complained of."

Again, in the case of *State v. Tighe*, 71 Pac. 3 at 9 (Mont., 1903), a conviction for murder in the second degree was reversed where the time for final arguments was limited in advance to one hour and three quarters. The court there held:

"The Court, against the objection and over the exception of the defendant, limited the time of argument to the jury to one hour and three-quarters for the state and to a like period for the defendant. The trial consumed five days and many witnesses were examined.

> The case was a capital one. * * * To determine in advance just how long a time will be required for counsel to present his client's case to a jury is a delicate task. There is always danger that the time may be too short, and injustice may result. *It is always better in prosecutions for felony * * * to allow all the time counsel desire to use, subject of course, to the power of the court to check excursions and prevent needless repetitions.* At least one respectable court has held it is error for the judge to predetermine the time allowed in argument in any case of felony. Williams v. State, 60 Ga. 367, 27 Am. Rep. 412. In so limiting the time for argument by defendant's counsel, the Court erred." (Emphasis supplied.)

See also *People v. Labadie*, 33 N. W. 806 (Mich., 1887), which holds that it is impossible for the Court to know in advance the course decided upon by counsel or the length of time they may require in presenting the argument and illustrating their position.

In the instant case, the Court was wholly unable to prejudge, from the bench, the requirements of defense counsel for final argument. The Court made no inquiry as to the basis or grounds for the expressed needs of defense counsel. While practice may vary, and needs of advocates may differ in individual cases, the action of the Court herein cannot be condoned by mere custom. The limitation of argument fixed in these proceedings must be judged within the context of the special circumstances of this particular case. That other counsel in other cases might require 15 minutes, 30 minutes, or only an hour does not justify the Court's summary disregard herein of the expressed needs of Appellant's counsel. Protest was duly made to the Court's fiat, and exception timely noted. This protest was ignored. In arbitrarily overruling the legitimate requests of counsel

for more time for final argument, without investigating the basis for their needs, under the special circumstances of the instant case, the Court abused its discretion and committed reversible error.

In the case of *Rossi v. U. S.*, 9 F. (2d) 362 at 368, the Court of Appeals held that recognition of Appellant's constitutional rights must be paramount to mere procedural expediency, stating:

> "The constitutional right of a defendant to be heard by counsel cannot be taken away by a court. The court has a right to limit within proper bounds the time of argument in order to prevent abuse thereof; but it cannot place such a limit as to prevent a full and fair presentation of defendant's case to the jury by his counsel. The right to counsel is at least partially destroyed if sufficient time is not allowed to fully and fairly present the facts. *While it is a just criticism of criminal practice that too much time is consumed in the trial of cases, nevertheless it is of greater importance that those accused of crime have the right, within reasonable bounds and according to the rules of the court conducive to orderly procedure of business, to present their defense, than that the time be saved.* * * *." (Emphasis supplied.)

Courts in many jurisdictions have recognized that an hour and a quarter is wholly inadequate to present final arguments of complex fact situations, following lengthy trials, similar to the instant case. According to an annotation found in 25 L. R. A. (NS) 1027 at 1033-1034, limitations placed upon the argument of counsel have been held unreasonable under the following circumstances:

> One hour and three quarters to each side in a trial for assault with intent to rape, which lasted five days, where the testimony was voluminous and conflicting; it appearing

that counsel for defendant objected and showed that he could not complete his argument within the time limited, though he was allowed 20 minutes additional time. People v. Fernandez, 87 Pac. 112 (Cal.).

One hour and three quarters to each side for argument of a capital case to the jury, where the trial consumed 5 days and many witnesses were examined. State v. Tighe, 71 Pac. 3 (Mont.).

One hour and a half to each side in a prosecution for murder, it appearing that the trial consumed more than 4 days, that over 20 witnesses were examined, whose testimony made a typewritten volume of nearly 500 pages and that the preliminary examination of the jurors disclosed that there existed in the public mind a considerable prejudice against the accused. State v. Mayo, 85 Pac. 251 (Wash.).

One hour to each side in a prosecution for arson, it appearing that 7 witnesses were examined for the prosecution and five for the defense, and that the evidence was circumstantial and conflicting. Wingo v. State, 62 Miss. 311. See also People v. Green, 34 Pac. 231 (Cal.); People v. Labadie, 33 N. W. 806 (Mich.).

See also *Hanks v. State*, 129 N. W. 1011 at 1013 (1911), where one hour and 15 minutes per side was allowed counsel in prosecution for rape. The Court there stated, in its opinion:

> "* * * We again express our disapproval of a limitation to so narrow a period where defendant's liberty is at stake * * *."

To the same effect is *State v. Nyman*, 10 A. 161 (Conn., 1886) where conviction of murder in the second degree was

reversed because the Court stopped senior counsel in his argument to the jury after he had consumed an hour and overruled his claim for additional time.

In the case of *People v. Green*, 4 P. 231 at 232 (Cal., 1893), appellant's conviction for robbery was reversed where final arguments of counsel were limited to one hour following a three day trial involving the testimony of 24 witnesses, and the evidence was circumstantial and conflicting. This case was cited with approval by the California Court of Appeals as recently as 1951. The Court there held:

> "* * * *That a defendant being tried on a charge of felony has a constitutional right to be fully heard in his defense by counsel, which is not within the discretionary power of the court to abridge or deny, is not to be questioned.* * * * It is also well settled that the court has a discretionary power to restrain what has been termed, perhaps not quite appropriately, an 'abuse' of this right, by which is meant very little more than that counsel may be restricted to a discussion of matters relevant to the case and restrained from wasting the time of the court by useless repetition. * * * And as was said in the case of People v. Keenan, 13 Cal. 581, [where limitation of one and a half hours was held abuse of discretion]: *'If it (the court) imposes a limitation of time upon counsel, against their consent, this must be done at the risk of a new trial, if it be shown * * * that the prisoner was deprived, by this limitation, of the opportunity of a full defense, for this is his constitutional right, without which he cannot be convicted.'* And in the same case it was said: 'It is impossible to deny that, if the constitutional privilege of being heard by counsel be allowed at all, it must be so admitted as that the prisoner may have the benefit of a complete discussion of all the matters of law and evidence embraced by the case. * * *.'

"Under the circumstances, we think the order limiting defense counsel to one hour exceeded the discretionary power of the Court." (Emphasis supplied.)

In the case of *State v. Mayo*, 85 P. 251 at 254 (Wash., 1906), Appellant's conviction of murder was reversed where, following a four day trial involving the testimony of 20 witnesses covering a stenographic transcript of nearly 500 pages, counsel were limited in final arguments to an hour and a half. Under facts peculiarly similar to the instant case, the court held:

"The court against the objections and over the exception of the appellant, limited the time of argument to the jury to one and a half hours on each side. It is contended here that this was such a manifest abuse of discretion on the part of the court as to entitle the appellant to a new trial. It seems to us that this contention is also well taken. To appear and defend in person and by counsel is a right guaranteed to one accused of crime by the constitution of this State as well as by the Federal constitution; and it is not to be denied that a part of that right is the right to address the jury on the questions of fact the issues present for determination. * * * Any limitation of it which seems to deprive the accused of a full and fair hearing has generally been held error entitling the defendant to a new trial.

"* * * (Citing cases). In this case, the trial consumed something more than four days. Over 20 witnesses were examined and the evidence reported to this court makes a typewritten volume of nearly 500 pages. * * * *Under these circumstances, we are clear that the limitation of one and a half hours was too restrictive to allow a full and fair discussion of the facts of the case; and hence was a violation of the defendant's constitutional rights.*" (Emphasis supplied.)

In the case of *State v. Rogoway*, 81 P. 234 at 234 (Ore., 1905), conviction of arson was reversed where defense counsel were restricted to a total of one hour for final argument. The trial had consumed three days and involved the testimony of 21 witnesses, covering 160 pages of stenographic transcript. In holding that while counsel talk of the issues, they are entitled to complete their argument, the Court stated:

> "* * * It is declared in the Bill of Rights that 'in all criminal presentations, the accused shall have the right * * * to be heard by himself and counsel.' Sec. 11, Bill of Rights, Constitution Or. * * * A similar guarantee is contained in the Federal constitution. *This means that the accused shall have the right to be fully and fairly heard, or else it means nothing. Anything less would be an invasion and restriction of the right guaranteed. * * * Under similar constitutional provisions, it may be regarded as settled law in American courts that any abridgment of this right which deprives the accused on trial of the time necessary to make his defense fully and fairly is an error, for which a new trial will be granted. * * * While counsel speak to the point and proceed in good faith, wasting no time, how can the court forbear to be patient and hear what is said?* * * *.
>
> "Now as shown by the record in this case, two counsel appeared for the accused. It required the greater part of three days to try the case. There were 21 or 22 witnesses examined, the testimony of whom, when transcribed and typewritten filled a volume of 160 pages. * * * Much of his testimony was circumstantial and conflicting and the case was attended with many complications that required careful analysis on the part of counsel * * *. Considering the whole case, we are clear that the limitation of one hour was too restrictive to permit a full and fair discussion of the case before the jury, and a violation of defendant's constitutional rights. * * *" (Emphasis supplied.)

The evidence in the present case was complicated and embraced a wide range of alleged incidents; it covered 564 pages and took three days to present; the trial was marked by numerous wrangles between Counsel, testimony was admitted and then stricken out, and matters became further involved when the witness Murray testified after half of the argument of counsel both for the State and for the defense had been concluded. A mere reading of the record conclusively shows that the defense could not be adequately presented in an hour and fifteen minutes, and this is particularly true when it is remembered that two defense counsel participated in the argument to the jury. Nor was there any valid reason for not allowing more time. We appreciate the desirability of expediting the trial of cases, but the primary function of the courts is the fair and proper administration of justice and the desire for speed should never be permitted to interfere with the carrying out of this essential task. As the authorities heretofore cited point out the court can readily prevent any abuse by counsel of their right to argue to the jury by stopping them when they have covered the case and are merely indulging in repetition, but we very earnestly contend that a time limit of one hour and fifteen minutes imposed on two defense counsel in a case that took three days to try and involving thirty-eight witnesses whose testimony covers 564 pages was so serious an abuse of the court's discretion as to require a reversal of the judgment of conviction in this case.

As heretofore shown, some authorities hold that the trial judge cannot impose any time limit in serious cases, though he can prevent the argument from becoming merely repetitious, but assuming that reasonable limitations can be imposed and that the length of time is largely in the dis-

cretion of the trial judge we very earnestly submit that this discretion was abused in the present case, that the limitation imposed was unreasonable under the existing circumstances and that it deprived the Appellant of his constitutional right to be adequately represented by Counsel. The guaranty to a fair and impartial trial which both State and Federal constitutions give to persons accused of crime constitute one of the bulwarks of American freedom, and in this day when such guaranties are so flagrantly violated and ignored in many other parts of the world it is of particular importance that they be preserved and enforced in this country. Nor does the type of crime of which a person is accused, the desire of the State to eradicate such offenses by securing convictions, the impatience of the trial judge, or any other matter justify ignoring the constitutional safeguards to which every accused person is entitled.

CONCLUSION

For the reasons hereinbefore stated, it is earnestly contended that the decision of the Maryland Court of Appeals deprives the petitioner of rights guaranteed to him by the Federal and State Constitutions, and, for this reason, the judgment should be reversed.

Respectfully submitted,

R. Palmer Ingram,
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NOV 20 1953
HAROLD B. WILLEY, Clerk

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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The Daily Record Co., Baltimore 3, Md.

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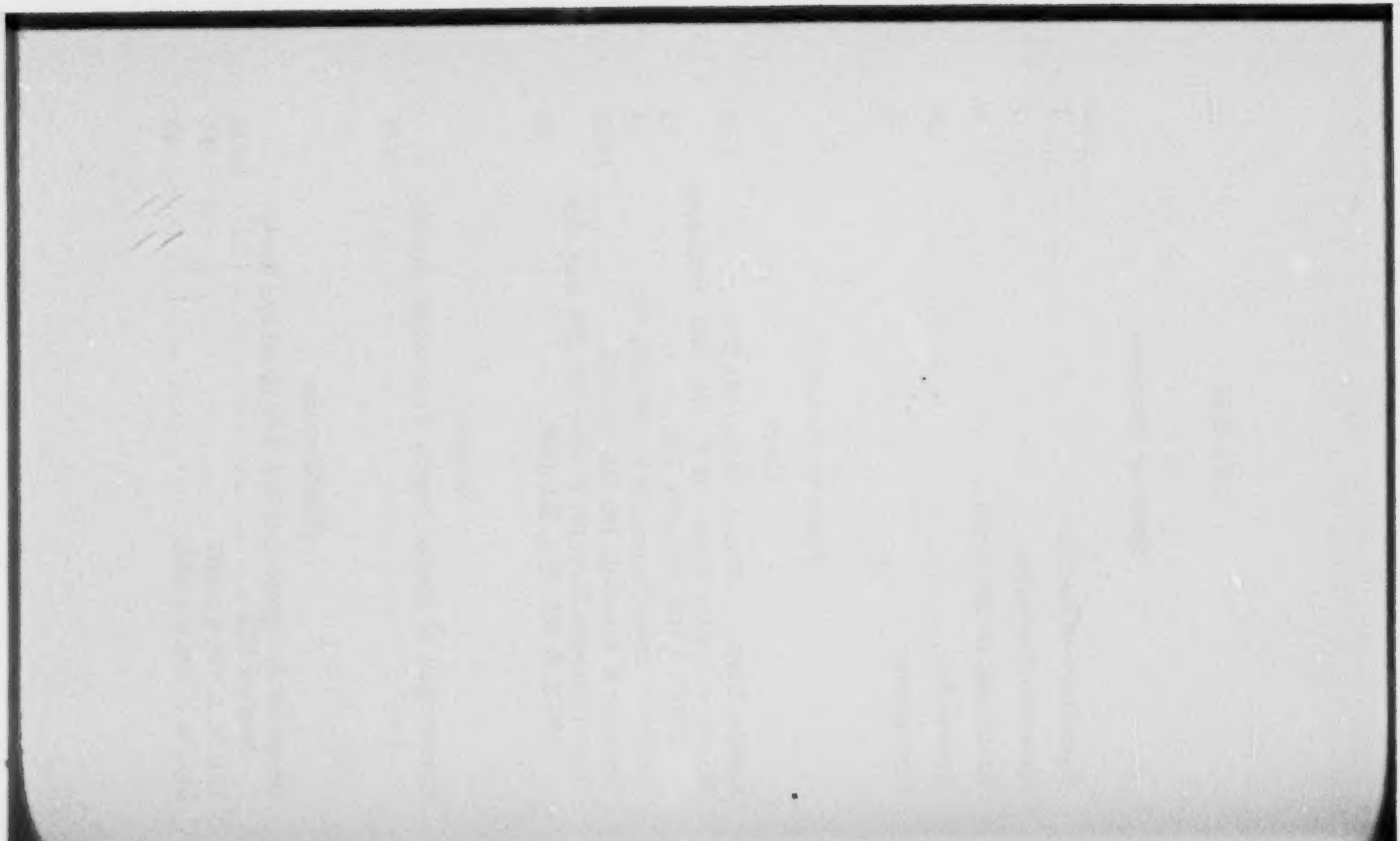

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF THE CASE

This is a petition for a writ of certiorari to the Court of Appeals of Maryland. Petitioner was charged by the Grand Jury of Baltimore City with having conspired between January 1, 1950, and January 17, 1952, with Leo Quattroche, Anthony Astarita, Alexander (Lee) Astarita, Thomas Murray, Washington Bragg (Briley), Norman Brown and certain other persons unknown to the Grand Jurors to violate the lottery laws of the State of Maryland.

The first trial resulted in a hung jury. Petitioner was then tried before the Honorable E. Paul Mason, Associate Judge of the Supreme Bench of Baltimore City and a jury and was found guilty. In the course of the trial, Petitioner

raised a number of questions, one of which was the limitation imposed by the trial court upon argument to the jury. This limitation was one hour for the State and one hour and fifteen minutes for Petitioner. Motion for a new trial was filed and overruled, and Petitioner was sentenced to serve seven years in the Maryland Penitentiary and to pay a fine of $2,000 and court costs.

Petitioner appealed from the judgment of the Criminal Court of Baltimore to the Court of Appeals of Maryland. There, among other things, he contended that the limitation placed upon argument to the jury denied him the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals affirmed the judgment and ruled that the limitation upon time allowed for argument was a matter within the discretion of the trial court, which discretion was not abused. This opinion has not yet been reported in the official Maryland Reports and is to be found in 97 A. (2d) 129.

QUESTION PRESENTED

Did the limitation placed upon oral argument by the Trial Court deny Petitioner due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States?

STATEMENT OF THE FACTS

The State produced twelve witnesses: Leo Quattroche, Alexander (Lee) Astarita and Anthony Astarita were accomplices; Eleanor Quattroche and Mary Astarita were wives of accomplices; Frank Krysiack was Eleanor's brother-in-law; two were police officers; Berman was a bondsman and Gueron was a Clerk in the Criminal Court.

The other two were Sanford Gibson and Washington Bragg (Briley). The latter's testimony was stricken out by the Trial Court. References are to the trial record.

Leo Quattroche identified Petitioner and stated that he had known him for about twelve years (8). He admitted a numbers conviction (9). In January, 1950, he had gone with one "Joe" to see Petitioner who was advised that Lee was going to write numbers for them. Petitioner told Lee he was glad to have him (11). A "couple of times" he turned in his take to Petitioner (14). He admitted that at his trial he had told the Court that he did not know the name of his backer (46). Prior to his arrest, he had been in the racket for a period of two to six months (50-51). After he had served his sentence of nine months, he appeared before the Grand Jury and testified in the first trial. Upon the termination of the first case, his fine of $7,600 was suspended by Judge Sherbow (21, 23, 43).

Eleanor Quattroche (wife of Lee) identified Petitioner and said she had known him for about two years prior to her husband's conviction (81, 61-62). After her husband's conviction, she went with her brother to Bud's Cafe, where she met Petitioner and asked him about paying her husband's fine (62-64). Petitioner told her that the fine did not have to be paid until three weeks before Lee's sentence ran out (65). She saw Petitioner on about ten different occasions — each time in company with her brother (66). On one of these visits, Petitioner offered to pay the witness $3,000 if her husband would serve out his fine (i.e., three months) (67). On another occasion, Petitioner told her he would pay her $20 a week while her husband was in the House of Correction (67). That was paid (68). Petitioner refused to pay the fine and she went to see

Judge Sherbow. She testified before the Grand Jury and in the first trial (69-70).

Frank Krysiack (brother of Eleanor Quattroche), in substance, corroborated his sister's testimony (88-95). He admitted that he had a numbers conviction (97).

Alexander (Lee) Astarita (brother of Anthony) testified that until six months prior to the trial, he had been in and out of the numbers racket for about ten years (112). He identified Petitioner (129), and stated that he had known him for at least ten years (111). Because his previous backer had dropped out, he went to see Petitioner about one year before the trial and started writing numbers for him (113). He and his brother worked together and turned in together (114-115). On some occasions, he turned in his take at Bud's Cafe to a boy pointed out to him by Petitioner (116-117). In August, 1951, his brother, Tony, was arrested (119). Along with Tony's wife, Mary, he went to see Petitioner about bail (120-121). The following day, Lee, Tony and Mary went to see Petitioner at Bud's Cafe about a lawyer to represent Tony (123). They selected one of those suggested by Petitioner (126), who told them he would repay the amount of the fee "out of the ribbons" (128). Subsequently, Lee paid his brother "out of the ribbons" (130). On cross examination, the witness admitted that he did not know any of his other backers and that his brother Tony did not know Petitioner (133).

Anthony (Tony) Astarita, in substance, corroborated Lee's testimony (155, 160, 162-175). Upon his conviction, he was sentenced to nine months in the House of Correction and to pay a fine of $5,000 (176). He served about two and one-half months of his sentence and then advised

Judge Sherbow that he wanted to appear before the Grand Jury (176). He testified at the first trial and was released from jail upon termination of that case (187).

Mary Astarita (Tony's wife) corroborated the testimony of Lee and Tony concerning the visits to Petitioner (193-202). After Tony's conviction, she went with Lee to see Petitioner who told Lee to take $25 a week off of the slip and give it to her. This was paid until her husband testified before the Grand Jury (203). Just prior to that, she had complained to Petitioner that $25 a week was not enough (204).

Officer Charles Baker testified concerning the arrest of Thomas Murray (217) and his conviction and sentence (219).

Captain Alexander L. Emerson testified, in general, concerning the operations of a lottery racket (274-283).

Testimony of Washington Bragg (Briley) appears in the trial record at pages 233 through 245. All of this testimony was taken subject to exception and, upon conclusion of the case, was stricken out by the trial court for the reason that the identification of Petitioner by the witness was not sufficiently definite.

Sanford Gibson testified as follows: He worked in a bootblack parlor just around the corner from Bud's Cafe (245, 246-247). He had been on welfare from 1937 until May, 1952. He had known Petitioner for about ten or twelve years (247). On May 9 or 10, 1952, Petitioner came to him, gave him a roll of money and asked him to go with Petitioner to the Sheriff's office to pay the fine of Thomas Murray in the amount of $1,000 (250-252). They drove to the Court House and Gibson went in the Sheriff's office and

paid Murray's fine. They then drove to the Baltimore City Jail. The witness went in and presented the release given him by the Sheriff and got Murray. They walked to the gate together. When Murray saw who was in the car he turned around and went back, stating he wanted to wait for a taxicab (254).

Petitioner's evidence consisted of twenty-one character witnesses, his own testimony, that of Lenora Williams, (formerly a waitress in Bud's Cafe), Sebastian Kuczinski and Paul L. Sullivan, (patrons of Bud's Cafe), and Thomas Murray.

All of the character witnesses testified that they knew Petitioner and his reputation for truth and veracity in the community in which he lived; that such reputation was good and that they would believe him under oath.

Petitioner took the stand in his own defense and, in general, denied that he had ever had any connection whatsoever with the numbers racket. In particular, he denied the testimony of the various witnesses produced by the State. He admitted that he had talked to Mrs. Quattroche and her brother, Frank Krysiack, on two different occasions at Bud's Cafe. However, he stated that on the occasion of the second visit Mrs. Quattroche had tried to "shake him down" for some money and that he had ordered her out of the Cafe. The ex-waitress, Lenora Williams, and the bar patrons, Sebastian Kuczinski and John L. Sullivan, all testified to an argument between Petitioner and a woman, unknown to them, at or about the time when Mrs. Quattroche had visited the Cafe and that the argument was about money.

Thomas Murray had been summoned by the State as one of its witnesses. However, the summons was returned

non est. After testimony had been concluded and argument to the jury begun, Murray appeared. A conference was held in the Judge's Chambers, during which the State announced that it did not intend to call Murray. The Court afforded counsel for the State and for Petitioner an opportunity to interview Murray. At the conclusion of the interview, Petitioner's counsel announced that they desired to call Murray as a defense witness. His testimony is set forth in full in the Appendix which Petitioner has filed with this Court at pages 43 to 65, inclusive.

Murray denied that he had ever seen Petitioner or that he worked for Petitioner in the numbers business (43). He stated he did not know who had paid his fine (43). He denied that on May 9, the day on which his fine was paid, he had seen anyone over at the jail or outside the jail other than Sanford Gibson. He further denied that he walked up to an automobile in which Petitioner was seated (43). He stated that: "I came across to the gate of the jail and asked a fellow who paid my fine. He said, come along. I turned around and walked back and said let me in, I will wait for a taxicab" (43-44). He stated that he had not received a summons; that "I stayed home all day Friday and Saturday, I didn't get no summons" (44). On cross examination, he admitted that he had been in the numbers business since 1948 when his brother became ill and he took over his books (45). He admitted that he had two convictions. In 1933, when he was eighteen years of age, he was convicted of larceny and sentenced to sixty days in jail. In 1951 he was convicted of a numbers violation and sentenced to ninety days in jail and a $100 fine (46). He had been writing numbers "for a fellow named Al, and he was turning in to Johnny (Comi)" (46-47). Upon release from jail early in 1951, he went back in the numbers

racket (47, 48). He admitted another numbers charge in June or July, 1951, and that, upon conviction, he was sentenced to serve nine months in the House of Correction and to pay a fine of $1,000 (48). On January 14, 1952, he appeared in the State's Attorney's office and before the Grand Jury (48).

In response to the question "Now for whom were you working when you were arrested in June of 1951?", Murray answered: "The fellow they told me named Louis Comi" (49). In response to the further question "How long had you been working for that man?", he answered: "Ever since I started picking up" (50). He was then asked where he first saw this man called Louis Comi, and he stated: "I seen him come over the house with Johnny three, four or five times. * * * That is where we used to turn in our numbers at" (50). The witness described this "Louis Comi" as a "big tall fellow with dark hair and dark mustache" (50). Murray further testified that he turned over numbers slips and money to this man "Over to a beer garden on a street (Lombard) over there in East Baltimore". He did not know the name of the beer garden (50). He denied that Petitioner was "the tall boy with the mustache". He stated that he had "gone to Louis's house once" (50); that he had gone to Johnny's house with a box of money to give to him; that two little white boys came and told him to take it to "Uncle Louis's house"; that Uncle Louis's house was located on Eastern Avenue (51); in the 2900 block, although he didn't know the exact number (52); that it was about two or three houses from the corner (52). He testified that he went to the back door which was opened by a lady and "I told her to give this to Johnny" (52). The State's Attorney directed Murray's attention to the fact that, in his sworn testimony before the

Grand Jury of Baltimore City on January 17, 1952, concerning this transaction, he had stated that he had taken $2,200 to a house located in the 2800 or 2900 block of Eastern Avenue; that he had gone "in the back way" and that he had given the money "to Louis" (53).

Murray further testified that he had gone down to a shore near Essex two or three times (53); that on each occasion he gave a box to this tall fellow with the mustache, whom he knew as Louis Comi (54); that on one occasion Washington Bragg had gone with him. Three or four days after he had been transferred from the House of Correction to the Baltimore City Jail his fine had been paid (55). Sanford Gibson came into the Jail after him. He had never seen Gibson before (55). He asked Gibson who had paid his fine and Gibson replied "You will see" (55). Although he walked to the front gate, he did not see any automobile (56). The State's Attorney pressed him for an answer to the question as to why he had turned around and walked back to the Jail. His answer was: "I didn't know him (Sanford Gibson)"; "I just didn't want to go with him" (57). A few days after that he received a notice to appear in the State's Attorney's office and he went to that office in response to a summons (58). He did not remember the State's Attorney advising him that the trial would start on the 19th and that he should be in court whether he received a summons or not. He admitted that he had been given a slip of paper with Officer Mello's name and telephone number but stated that he had left it over at his girl friend's apartment (60). On Monday, May 19, 1952, the date on which the trial began, he had gone over to his friend's house in South Baltimore. He then went to a movie (60). On Monday night he stayed at a hotel on Franklin Street with his girl friend (61). He

denied that anyone had given him any money to stay at the hotel or had told him to stay at the hotel rather than at his home. In response to the question "When did you next go home?", he answered: "I went home last night" (May 22, 1952) (61).

ARGUMENT

DID THE LIMITATION PLACED UPON ORAL ARGUMENT BY THE TRIAL COURT DENY PETITIONER DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Petitioner's sole contention is that he was denied due process of law by the limitation of one hour and fifteen minutes which was placed by the trial court on time granted his counsel for argument to the jury.

Prior to the commencement of arguments to the jury, the Court advised counsel that the State would be limited to one hour and that the defense would be limited to one hour and fifteen minutes. Seasonable objection was taken to this limitation by Petitioner's counsel. In support of this contention, Petitioner cites numerous cases to the effect that an unreasonable limitation on argument to the jury amounts to a deprivation of due process of law and constitutes reversible error.

American Jurisprudence, Volume 3 (Appeal and Error), Section 973, states the rule on this question as follows:

> "The control of the conduct of the counsel in the trial of a case rests largely in the discretion of the trial court and will not be disturbed by an appellate court in the absence of an abuse of such discretion. Thus, unless a clear abuse of discretion is shown, the action of the trial court in the control of the argument of counsel will not be reviewed. Likewise, limiting

> the time to be used by counsel in argument is within the sound discretion of the trial court, which is not subject to review by a higher tribunal unless abused."

The annotation referred to by Petitioner at page 13 of his brief (25 *L. R. A.* (N. S.) 1027) includes a review of cases not only where the time limitation imposed by the Court was held to be unreasonable but also a very long list of cases, including many criminal appeals, where such time limitation was held to be reasonable. The commencement of that note (1027) states the applicable rule to be as follows:

> "* * * The courts, however, generally recognize the fact that the trial court must necessarily have and exercise a large discretionary power to limit the argument of counsel, except as specially pointed out below in an Iowa case. So that it may be stated as a general rule that, in the absence of statutory provisions prescribing the practice, it rests in the sound discretion of the trial court properly to limit the time to be consumed by counsel in argument, — a discretion with which the appellate court will not interfere, unless the time was made so short as to be manifestly so prejudicial to the rights of the accused as practically to deny his constitutional right to have the assistance of counsel. * * *"

The note (1030) states that:

> "* * * the weight of authority establishes the principle that the court may in its discretion limit the time to be consumed by counsel in argument, and that the only restriction upon such discretion is that the time fixed must be reasonable and sufficient to allow counsel to present the case fully and fairly to the jury, * * *."

The only case in Maryland prior to the instant case on this point is that of *Shedlock v. Marshall,* 186 Md. 218, 225,

where, in discussing the limitations on argument to the jury imposed in that case by the Trial Court, the Court said:

> "The Court, when it directed the joint trial of the cases, applied the authority given by Rule 2 to regulate the proceedings by ordering that the arguments at the conclusion of the case should follow the order in which the cases were filed in Court. As a result of this, Shedlock's counsel made the first argument, Marshall's the second, and Miller's the third. Then Shedlock's counsel was given only five minutes for rebuttal, while he was allowed 30 minutes for his first closing argument. This is within the discretion of the trial court and his exercise of such discretion will not be disturbed, unless it is plainly arbitrary, and unless some injury is shown to have been done to the complaining party."

See also *Hardie v. United States,* 72 F. (2d) 803, certiorari *denied* 276 U. S. 636, 72 L. Ed. 744; *United States v. Kay,* 101 F. (2d) 270, 272, *certiorari denied* 306 U. S. 660, 83 L. Ed. 1056; *Medlin v. United States,* 28 F. (2d) 663, 665.

From these decisions, it appears that the rule in Maryland and in the federal courts is that limitation on argument is left to the sound discretion of the trial court and that such limitation will not constitute reversible error unless there has been a clear abuse of discretion — what amounts to "plainly arbitrary" action on the part of the trial court.

Petitioner claims that the limitation in this case was unfair and constituted an abuse of discretion because of the number of witnesses who testified; the testimony covered 564 pages of transcript; the issues in the case were complicated; numerous wrangles between counsel, which resulted in evidence being admitted and then stricken out;

and the introduction of Murray as a witness in the midst of argument to the jury.

It is true that thirty-eight witnesses testified over the course of a three day trial. However, twenty-one of them were character witnesses whose testimony was, for all practical purposes, identical. The remainder of the witnesses fall into logical groups and their testimony can be materially simplified. The two Quattroches and Krysiack testified to substantially the same facts. The three Astaritas testified to substantially the same facts. The testimony of the two police officers, of Berman (bondsman) and Gueron (Court Clerk) required practically no comment in argument to the jury. The testimony of Sanford Gibson was very short and involved only two salient points. The testimony of Washington Bragg (Briley) was stricken out by the Trial Court and, therefore, was not subject to argument. The testimony of Thomas Murray, although important and somewhat involved, could not conceivably require a very great portion of the total time devoted to argument. The waitress and the two bar patrons testified to a single and very simple point. The testimony of Petitioner, for all practical purposes, was a blanket denial of all of the testimony introduced against him.

It is true that the transcript of testimony in this case covers 564 pages. However, as is always the case, a number of pages are devoted to colloquy between the Court and counsel. The testimony of the character witnesses covers over 120 pages. The testimony of Bragg (which was stricken by the Trial Court) takes up 21 pages and another twenty-one pages are devoted to the innocuous testimony of the two police officers and of Berman and Gueron. Therefore, the meat of the testimony involves less

than four hundred pages, much of which is either repetitious or inconsequential.

It is not true that the issues presented in this case were complicated. On the contrary, the very character of the witnesses who testified reduced the issues to the utmost simplicity. They were discussed very adequately by the Trial Court in his charge to the jury and take up only nine pages of the transcript.

The wrangles between counsel and the Court and the testimony stricken out by the Trial Court were not subject matter for argument to the jury and, therefore, did not require any time whatsover.

It is true that the production of Murray as a defense witness furnished additional matter which had to be covered in the argument to the jury. However, Petitioner's counsel elected to produce Murray as a witness, knowing of the time limitation imposed by the Trial Court. When the determination was made to use Murray as a witness, it was made with the understanding that no additional time would be given for argument to the jury. In addition to this, Murray's testimony furnished considerably more material for the State's argument than it did for the defense.

It is respectfully submitted that the amount of time allowed for arguments to the jury lies within the sound discretion of the Trial Court; that, unless there has been a clear abuse of such discretion and some injury to the complaining party, such limitation does not constitute reversible error. It is further submitted that an hour and a quarter for defense argument to the jury in this case was more than sufficient and that the limitation did not in any way deprive Petitioner of due process of law.

It is to be noted that under the rules of both the Supreme Court of the United States and the Court of Appeals of Maryland, the time for argument on appeal is limited to one hour. As was said by the Court of Appeals in its opinion affirming the instant case, at page 133 of 97 A. (2d):

> "* * * we may note the modern trend towards limitation of argument on appeal, under the rules of this court and of the Supreme Court, to one hour a side."

CONCLUSION

It is respectfully submitted that the Petitioner was not deprived of the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States and that the Petition should, therefore, be denied.

Respectfully submitted,

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